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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

N.G. AND L.G., minors, by and
 through their Guardian ad
 Litem, Lilliana Magallon; SARA
 PEREZ.

Plaintiffs,

vs.

COUNTY OF LOS ANGELES;
 LEROY BACA, DAVID
 CHEVEZ, LAURENCE
 SWANSON, DOES 5 – 10.

Defendants

Case No.: CV13-008312-SVW
 (FFMx)

PLAINTIFFS' OPPOSITION TO
 DEFENDANTS' MOTION IN
 LIMINE NO. 1 TO EXCLUDE
 EVIDENCE OF DEPUTY
 TATTOOS; DECLARATION OF
 SAMUEL OGBOGU.

Plaintiffs hereby oppose Defendants' Motion in Limine No. 1 to
 exclude evidence of Deputy tattoos. It is significant that the defendants
 filed an opposition to plaintiffs motion in limine to preclude any
 reference to decedent's tattoo, but now seeks this court to exclude

1 reference to tattoos taken by the two deputies involved in this shooting.

2 3 INTRODUCTION 4

5 Jilberto Gutierrez was stopped by officers who claimed that he was
6 looking at the window of a parked car. Jilberto Gutierrez who indicated
7 that he was simply looking at himself in the window of a parked car was
8 nonetheless detained, searched and arrested by the deputies on a charge
9 of possession of Methamphetamine. He was taken to the South Los
10 Angeles Sheriff's station and was later transported to Centinela
11 Hospital due to complaint of chest pain.

12 On August 18, 2012 at approximately 1:00 a.m., while *unarmed*
13 and with his left hand handcuffed to a hospital gurney, Jilberto
14 Gutierrez was shot to death by Deputy David Chevez. Deputy Lawrence
15 Swanson was present at the time of this shooting and less than a
16 minute prior to the shooting, Deputy Swanson stood by and observed
17 Deputy Chevez strike the decedent to the head for no just cause. Despite
18 deposition testimonies of independent hospital staff witnesses to the
19 contrary and despite the pathologists indication that the bullet pathway
20 is inconsistent with the deputies account of the incident, Deputies
21 Swanson and Chevez stuck to their script that the shooting was
22 precipitated by a violent struggle for Deputy Swanson's gun which
23 ended with the fatal shooting of Gutierrez after he leaped from the
24 hospital bed, while still handcuffed, and charged at Swanson to
25 disposess him of his gun.

26 In March 2013, subsequent to the shooting, Deputies Chevez and
27 Swanson went to tattoo shop and had a tattoo of a grim reaper with the
28 symbol of death, tattooed to their respective ankles. In their deposition

1 testimony, Deputies Chevez and Swanson testified that the tattoo
2 signified "pride".

3 Notwithstanding their contradictory contention in opposing
4 plaintiff's motion to exclude evidence of decedent's tattoo, Defendants
5 now seek to exclude the evidence of this tattoo on the basis that the
6 tattoos are irrelevant to the issues and would be unduly prejudicial to
7 defendants. It is Plaintiffs' contention that evidence that the defendant
8 deputies obtained a *tattoo bearing the symbol of death* obtained months
9 after the shooting death of Jilberto Gutierrez is relevant in the
10 determination of whether there was a "purpose to harm" decedent as
11 opposed to a legitimate law enforcement purpose. *FRE 401 -403*.

12
13 **DEPUTIES SELF-SERVING STATEMENT THAT THE**
14 **TATTOO WAS OBTAINED AS A SHOW OF "PRIDE" IN THEIR**
15 **STATION DOES NOT MAKE THE TESTIMONY IRRELEVANT**

16 Deputies Chevez and Swanson testified that the reaper tattoo
17 depicts a symbol of death. While the deputies may argue that the
18 symbol of death tattoo taken months of the shooting of Jilberto
19 Gutierrez was a coincidence, a jury can infer otherwise. The credibility
20 of their explanation as to the what the tattoo represents, why they
21 obtained the tattoos, where they obtained the tattoos and the
22 circumstances that led to their getting the tattoo are issues left for the
23 determination of the jury.

24 In their deposition testimonies, the deputies testified as follows:

25
26 16 A. I have a tattoo on my ankle.

27 17 Q. And what is it of?

28 18 A. It's a tattoo of a reaper.

1 19 Q. Like a Grim Reaper?

2 20 A. Like a Grim Reaper, yes.

3 21 Q. And which ankle is it, sir?

4 22 A. It's on my left ankle.

5 23 Q. And does it have a number?

6 24 A. Yes, it does.

7 25 Q. What's the number?

8 1 A. 96.

9 2 Q. And when did you receive it?

10 3 A. It would be sometime last year.

11 4 Q. After the shooting?

12 5 A. Yes, it was.

13 6 Q. And what would be the date that you got

14 7 it?

15 8 A. I really don't know the date.

16 *See Declaration of Samuel Ogbogu ¶2 (Deposition of Deputy Chevez Vol.*
17 *1 pages 64-65).*
18

19 THE DEPONENT: That -- it's a reaper --

20 2 tattoo of the reaper.

21 3 Q. BY MR. CASSELMAN: Well, what -- describe

22 4 what that is. I mean, I have my own idea, but I

23 5 don't want to leave it up in the air, for anybody

24 6 to make their own conclusions.

25 7 A. It's a tattoo of a reaper holding a --

26 8 Q. Thing with -- a long curvy thing, with a

27 9 big staff?
28

1 10 A. Yes.

2 11 Q. That's, like -- that's, like, the symbol
3 12 for death, isn't it -- the reaper?

4 13 MS. MATHERS: Objection. Lacks
5 14 foundation.

6 15 If you know, you may answer.

7 16 THE DEPONENT: I know it -- I've known it
8 17 to be a symbol for death. That's not the only
9 18 symbol for it, but yeah, it's a symbol of death.

10 See Declaration of Samuel Ogbogu ¶2 (Deposition of Deputy Chevez Vol.
11 1 page 75).

12 There is nothing in the moving paper that in anyway suggests how
13 this evidence is unduly prejudicial. The jury is allowed to determine the
14 what weight to attach to this evidence and what credibility to attach to
15 the explanation of the deputies as to why they got a grim reaper tattoo
16 with death symbol after the shooting death of Gutierrez.

17
18 **TO THE EXTENT THAT THE DEFENSE BELIEVES THAT**
19 **EVIDENCE OF DECEDENT'S TATTOO IS RELEVANT AND**
20 **ADMISSIBLE, PLAINTIFFS ARE EQUALLY ENTITLED TO THE**
21 **SAME ARGUMENT, INCLUDING THE DEFENDANTS'**
22 **'MOTIVE TO HARM.**

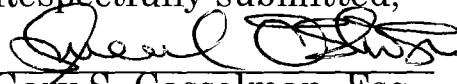
23
24 Notwithstanding the provisions of FRE 403 and 404, Defendants
25 argue that "The decedent's tattoos are probative of bias, opportunity, and motive,
26 as well relevant to the quantum of recoverable damages. FRE 401".

27 That scenario is however different from the deputies tattoos. The deputies
28

1 tattoo taken after the shooting indicates evidence of their state of mind during and
2 post shooting. Getting a tattoo with symbol of death cannot be reasonably seen as a
3 way of showing "pride" in a law enforcement organization and a jury's function is
4 to weight credibility and weight of evidence. Defendants have failed to advance
5 any argument as to why this evidence should not be admitted. Evidence is not
6 disallowed because it is prejudicial. The defense has the burden to show "*undue*
7 *prejudice*" and they have failed to make the showing.

8 Based on the foregoing, the defendants' motion to exclude the deputies grim
9 reaper tattoo symbolizing death taken after the shooting death of Gutierrez should
10 be denied.

11
12 DATED: July 16, 2014

13 Respectfully submitted,
14 By 
15 Gary S. Casselman, Esq.
16 Robert Scott Shtofman, Esq.
17 Samuel O. Ogbogu, Esq.
18 Attorneys for Plaintiffs,
19 N.G. and L.G., minors, by and
20 through their Guardian ad
21 Litem, Lilliana Magallon, and
22 SARA PEREZ
23
24
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28

DECLARATION OF SAMUEL OGBOGU

I, Samuel O. Ogbogu, declare as follows:

1. I am an attorney at law duly licensed to practice before all of the Courts of the State of California. I, along with attorney Robert Shtofman and Gary Casselman, are the attorneys of record for plaintiff, Plaintiffs, N.G., L.G. and Sara Perez in this action. As such, I am familiar with the facts of this matter and if called upon as a witness I could and would competently testify to the following facts of my own personal knowledge.

2. Attached as Exhibit "A" to this declaration are excerpts from the deposition of Deputy Chevez, Vol. 1 taken on March 5, 2014 to which I was present as counsel.

3. This declaration is made in support of plaintiffs' opposition to defendants' motion in limine No. 1.

I declare under penalty of perjury under the Laws of the State of California and the United States of America that the foregoing is true and correct this 15th day July 2014 at Los Angeles, California.



Samuel O. Ogbogu, Esq.

EXHIBIT “A”

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

N.G. AND L.G., minors, by and)
through their Guardian ad Litem,)
Lilliana Magallon; SARA PEREZ,)
Plaintiffs,)
vs.) Case No.
COUNTY OF LOS ANGELES; LEROY) CV13-008312-SVW
BACA; DAVID CHEVEZ; LAURENCE) (FFMx)
SWANSON,; and DOES 5-10,) Volume I
Defendants.)
_____)

VIDEOTAPED DEPOSITION OF DAVID CHEVEZ

Los Angeles, California

Wednesday, March 5, 2014

Reported by: Elena C. Chester
CSR No. 10274
NDS Job No.: 161028

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

N.G. AND L.G., minors, by and)	
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Lilliana Magallon; SARA PEREZ,)	
)	
Plaintiffs,)	
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vs.)	Case No.
)	CV13-008312-SVW
COUNTY OF LOS ANGELES; LEROY)	(FFMx)
BACA; DAVID CHEVEZ; LAURENCE)	
SWANSON,; and DOES 5-10,)	Volume I
)	
Defendants.)	
)	

VIDEOTAPED DEPOSITION OF DAVID CHEVEZ,
taken on behalf of the Plaintiffs, at 4311
Wilshire Boulevard, Suite 308, Los Angeles,
California, on Wednesday, March 5, 2014,
beginning at 10:30 A.M. and ending at 2:57 P.M.,
before Elena C. Chester, Certified Shorthand
Reporter Number 10274.

1 APPEARANCES:

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cmathers@ccmslaw.com

Also Present:

DEPUTY LAWRENCE E. SWANSON, JR.

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EXHIBITS

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Exhibit 2	Side-view photo of Deputy Chevez, standing/leaning position	151
Exhibit 3	Front-view photo of Deputy Chevez, standing/leaning position	152

QUESTIONS SUBJECT TO INSTRUCTION NOT TO ANSWER
(None)

INFORMATION REQUESTED
(None)

1 LOS ANGELES, CALIFORNIA;
2 WEDNESDAY, MARCH 5, 2014; 10:30 A.M.

3
4 MR. CASSELMAN: Good morning. Today is
5 March 5, 2014. We are here, in the office of
6 Mr. Ogbogu. And that's at 4311 Wilshire Boulevard,
7 Suite 308, Los Angeles, California. And this is
8 the deposition of David Chevez, C-h-e-v-e-z. And
9 this is the case of N.G. and L.G., et al., v.
10 County of Los Angeles, et al.; in U.S. District
11 Court; Case CV13-008312-SVW (FFMx).

12 My name is Gary Casselman. And pursuant
13 to Federal Rules of Civil Procedure, Rule 28, I
14 will be the person video-ing the proceedings here.
15 I'm also an attorney for the plaintiffs, and so I
16 will be multitasking.

17 Hopefully, we won't have too many
18 construction workers whistling outside our window.

19 In any event, sir, have you ever had your
20 deposition taken before?

21 THE DEPONENT: No.

22 THE REPORTER: Counsel, would you like me
23 to swear the witness in?

24 MR. CASSELMAN: All right. Let's go
25 ahead and swear the witness.

1 have of any words?

2 A. I really can't give you -- I don't want
3 to speculate.

4 Q. Now, you are trained that you are not
5 allowed to use force against somebody because they
6 use profanity against you; right?

7 A. Correct. That would be unreasonable
8 force.

9 Q. And by the way, do you have any tattoos
10 on yourself, sir?

11 A. Yes, I do.

12 MS. MATHERS: Objection. It's a
13 violation of his privacy.

14 Q. BY MR. CASSELMAN: And on what part of
15 your body are they, sir?

16 A. I have a tattoo on my ankle.

17 Q. And what is it of?

18 A. It's a tattoo of a reaper.

19 Q. Like a Grim Reaper?

20 A. Like a Grim Reaper, yes.

21 Q. And which ankle is it, sir?

22 A. It's on my left ankle.

23 Q. And does it have a number?

24 A. Yes, it does.

25 Q. What's the number?

1 A. 96.

2 Q. And when did you receive it?

3 A. It would be sometime last year.

4 Q. After the shooting?

5 A. Yes, it was.

6 Q. And what would be the date that you got
7 it?

8 A. I really don't know the date.

9 MS. MATHERS: You can just give him an
10 approximation.

11 Q. BY MR. CASSELMAN: This is early March.
12 So was it in December? November? I mean, it was
13 last year; right?

14 A. No, the incident wasn't in March.

15 Q. No. I'm saying we are in March now.

16 A. I'm sorry.

17 Q. So when, in time, did you get your "Grim
18 Reaper No. 96" tattoo?

19 A. Well, I never said it was a Grim Reaper.
20 I (unintelligible) --

21 (Two or more voices speaking at once.)

22 Q. BY MR. CASSELMAN: It was a reaper?

23 A. It was described as "a Grim Reaper."

24 MS. MATHERS: He just wants the
25 approximate date that you got the tattoo.

1 THE DEPONENT: Probably about -- I'd say
2 about a year ago. Maybe March of 2013.

3 Q. BY MR. CASSELMAN: March of 2013. Where
4 did you get it?

5 A. At -- well, it was a tattoo shop. And I
6 really don't remember where it was at.

7 Q. Well, let's start out with the county.
8 Was it L.A. county?

9 A. Yeah, I believe so.

10 Q. And what was the name of the tattoo shop
11 or its location?

12 A. I really don't remember.

13 Q. How did you learn about the tattoo
14 shop?

15 A. What do you mean, "how did I learn about
16 it"?

17 Q. Pardon me?

18 A. What do you mean by "how did I learn
19 about it"?

20 Q. Well, why did you pick that particular
21 tattoo shop?

22 MS. MATHERS: I'll object on relevance
23 grounds.

24 But go ahead.

25 THE DEPONENT: I didn't pick a tattoo

1 did -- Deputy Swanson -- did you discuss getting
2 these tattoos together?

3 A. I don't remember if we discussed getting
4 the tattoos together.

5 Q. But it just happened that you were both
6 at the same tattoo parlor, at the same time,
7 getting a reaper tattoo on your ankle?

8 Is that about how it happened?

9 A. Correct.

10 Q. Was it a coincidence, or did you go there
11 together?

12 A. I told you we went together. Yes.

13 Q. All right. And Munoz went with you;
14 correct?

15 A. Deputy Munoz and Deputy Meza, yes.

16 Q. What's the last name?

17 A. Juan Meza, M-e-z-a.

18 Q. Are these all folks who are deputies at
19 the same station as you?

20 A. Yes, they are.

21 Q. Okay. Describe the design of the reaper
22 tattoo that you and Swanson received.

23 MS. MATHERS: Objection. Asked and
24 answered.

25 MR. CASSELMAN: Never got an answer.

1 THE DEPONENT: That -- it's a reaper --
2 tattoo of the reaper.

3 Q. BY MR. CASSELMAN: Well, what -- describe
4 what that is. I mean, I have my own idea, but I
5 don't want to leave it up in the air, for anybody
6 to make their own conclusions.

7 A. It's a tattoo of a reaper holding a --

8 Q. Thing with -- a long curvy thing, with a
9 big staff?

10 A. Yes.

11 Q. That's, like -- that's, like, the symbol
12 for death, isn't it -- the reaper?

13 MS. MATHERS: Objection. Lacks
14 foundation.

15 If you know, you may answer.

16 THE DEPONENT: I know it -- I've known it
17 to be a symbol for death. That's not the only
18 symbol for it, but yeah, it's a symbol of death.

19 Q. BY MR. CASSELMAN: So it's your testimony
20 that you got this tattoo, with your partner, after
21 the shooting of Mr. Gutierrez, in which
22 Mr. Gutierrez died, to show pride?

23 A. Like I said, you keep -- I know you want
24 to bring it in, and you want to somehow tie in the
25 tattoo with the unfortunate incident, but it had

1 STATE OF CALIFORNIA)
) ss:
2 COUNTY OF LOS ANGELES)

3
4 I, ELENA C. CHESTER, do hereby certify:

5 That I am a duly qualified Certified Shorthand
6 Reporter, in and for the State of California, holder of
7 certificate number 10274, which is in full force and
8 effect and that I am authorized to administer oaths and
9 affirmations;

10 That the foregoing deposition testimony of the
11 herein named witness was taken before me at the time and
12 place herein set forth;

13 That prior to being examined, the witness named
14 in the foregoing deposition, was duly sworn or affirmed
15 by me, to testify the truth, the whole truth, and
16 nothing but the truth;

17 That the testimony of the witness and all
18 objections made at the time of the examination were
19 recorded stenographically by me, and were thereafter
20 transcribed under my direction and supervision;

21 That the foregoing pages contain a full, true
22 and accurate record of the proceedings and testimony to
23 the best of my skill and ability;

24 That prior to the completion of the foregoing
25 deposition, review of the transcript was requested.

1 I further certify that I am not a relative or
2 employee or attorney or counsel of any of the parties,
3 nor am I a relative or employee of such attorney or
4 counsel, nor am I financially interested in the outcome
5 of this action.

6
7 IN WITNESS WHEREOF, I have subscribed my name
8 this ____ day of _____, ____.

9
10
11 _____
12 ELENA C. CHESTER, CSR No. 10274

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